

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Applications of Tribune Media Company and	)	
Sinclair Broadcast Group	)	MB Docket No. 17-179
For Consent to Transfer Control of Licenses	)	
and Authorizations	)	
	)	
	)	

**REPLY OF RIDE TELEVISION NETWORK, NATIONAL ASSOCIATION OF  
BROADCAST EMPLOYEES AND TECHNICIANS – CWA, INTERNATIONAL  
CINEMATOGRAPHERS GUILD, NTCA – THE RURAL BROADBAND  
ASSOCIATION, PUBLIC KNOWLEDGE, SPORTS FANS COALITION, CINEMOI,  
HERNDON-RESTON INDIVISIBLE, AND INDIVISIBLE CHICAGO ALLIANCE**

RIDE Television Network, National Association of Broadcast Employees and Technicians – CWA, International Cinematographers Guild, NTCA – The Rural Broadband Association, Public Knowledge, Sports Fans Coalition, Cinemoi, Herndon-Reston Indivisible, and Indivisible Chicago Alliance<sup>1</sup> respectfully reply to the Second Consolidated Opposition to Petitions to Deny (“Opposition”)<sup>2</sup> submitted by Sinclair Broadcast Group, Inc. (“Sinclair”) and Tribune Media Company (“Tribune”) (collectively, the “Applicants”) in the above referenced proceeding.

---

<sup>1</sup> The signees are each members of the Coalition to Save Local Media (“Coalition”). This filing is on behalf of the signees in their individual capacities and not on behalf of the Coalition.

<sup>2</sup> Applicants’ Second Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (July 5, 2018) (“Applicants’ Second Opposition”).

## **I. INTRODUCTION**

In yet another dismissive and evasive pleading, the Applicants (1) fail to rebut evidence that a number of proposed “divestitures” are in fact acts of self-dealing with no tangible public interest benefits and (2) do not address evidence that these proposed divestitures and Sinclair’s proposed control of top-four duopolies in the Indianapolis and St. Louis markets will bring about anticompetitive harms to consumers and independent programmers. After numerous filings, withdrawals, re-filings, and further pleadings, the Applicants once again have completely failed to make the required showing that the transaction would satisfy the public interest standard.

The Commission should hold these applications in abeyance until the D.C. Circuit rules on the validity of the UHF discount, as this decision could fundamentally alter the broadcast ownership limits upon which the transaction is based.<sup>3</sup> To the extent the Commission decides to rule on the transaction as currently structured, it should reject the transaction, or, at a minimum, designate the transaction for a formal hearing.<sup>4</sup>

## **II. SINCLAIR’S OPPOSITION DOES NOT REBUT RECORD EVIDENCE THAT IT WILL CONTINUE TO EXERCISE CONTROL OVER DIVESTED STATIONS**

Sinclair retains options to repurchase six proposed “divestitures” and has simultaneously entered into various services agreements, allowing Sinclair to effectively exercise control of these stations. Yet, divestiture applicants still “have not even attempted to show that their

---

<sup>3</sup> See also Public Knowledge’s and Common Cause’s Motion Requesting to Hold Proceeding in Abeyance, MB Docket No. 17-179 (June 28, 2018); Letter from Daphna Edwards Ziman, President, Cinemai, et al., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-179, (July 9, 2018).

<sup>4</sup> See, e.g., Petition to Deny of Cinemai, Herndon-Reston Indivisible, International Cinematographers Guild, Latino Victory Project, National Association of Broadcast Employees and Technicians – CWA, NTCA – The Rural Broadband Association, Public Knowledge, Ride Television Network, and Sports Fans Coalition, MB Docket No. 17-179, at 3 n.5 (June 20, 2018) (“Petition to Deny of Diverse Members of the Coalition to Save Local Media”).

proposed divestitures serve the public interest.”<sup>5</sup> Free Press summed it up well: “By supposedly divesting violative duopoly stations . . . Sinclair is proposing to transfer the relevant stations from its metaphorical right hand to its left hand, and calling this farce diverse ownership.”<sup>6</sup>

In Petitions to Deny, Newsmax, Herndon-Reston Indivisible, Free Press and others have presented detailed evidence of Sinclair’s long history of using Cunningham Broadcasting to skirt FCC’s rules – and further explained how this game-playing will continue with its newly-minted sidecar partner Steven Fader.<sup>7</sup>

Sinclair’s response to claims of self-dealing with Cunningham (which plans to purchase Dallas’s KDAF and Houston’s KIAH) states that “Michael E. Anderson holds 100% of the voting shares of Cunningham” – yet Sinclair fails to disclose who owns the remaining non-voting *equity* interests in Cunningham.<sup>8</sup> Sinclair does, however, report this information in the “Related Person Transactions” section of its 10-K Annual Report, which states: “All of the non-voting stock is owned by trusts for the benefit of the children of [Sinclair’s] controlling shareholders.”<sup>9</sup> In short, the Commission must ensure that the divestitures to Cunningham are not simply shams.

Notably, Sinclair’s Opposition makes no mention at all of Steven Fader, the planned purchaser of Chicago’s WGN-TV. Fader is a business partner of Sinclair Executive Chairman David D. Smith; his business, Atlantic Automotive Corporation, has no apparent media

---

<sup>5</sup> Petition to Deny of American Cable Association, MB Docket No. 17-179, at 3 (June 20, 2018).

<sup>6</sup> Free Press’s Petition to Deny Divestiture Applications, MB Docket No. 17-179, at 11 (June 20, 2018) (“Free Press June 20 Petition to Deny”).

<sup>7</sup> See, e.g., Newsmax Media, Inc.’s Petition to Deny, MB Docket No. 17-179, at 9-14 (June 20, 2018) (“Newsmax June 20 Petition to Deny”); Petition to Deny of Herndon Reston Indivisible, MB Docket No. 17-179 (June 20, 2018); Free Press June 20 Petition to Deny at 9-18.

<sup>8</sup> Applicants’ Second Opposition at 6 n.20.

<sup>9</sup> Sinclair Broadcast Group, Inc., Annual Report (Form 10-K) at F-39-40 (Mar. 1, 2018) (“Sinclair Annual Report”); see also Newsmax June 20 Petition to Deny at 9-10.

ownership credentials; and Fader is also featured in the “Related Person Transactions” section of Sinclair’s 10-K.<sup>10</sup> And while the undersigned parties strongly support the promotion of diverse and minority-owned broadcast stations, the Howard Stirk Holdings divestitures raise questions, as Sinclair retains an exclusive, one-sided option to repurchase these stations.

To mitigate the anticompetitive harms that the transaction would pose, the undersigned once more urge the Commission to follow the common-sense standard consistently applied by the Department of Justice in broadcast mergers and require Applicants to *fully* divest these stations.<sup>11</sup>

### **III. SINCLAIR’S OPPOSITION DOES NOT REBUT THE CONSUMER AND OTHER PUBLIC INTEREST HARMS THAT WOULD RESULT FROM ITS PROPOSED TOP-FOUR DUOPOLIES IN INDIANAPOLIS AND ST. LOUIS**

Likewise absent from Sinclair’s Opposition is any attempt to rebut claims that Sinclair’s top-four duopolies will have adverse and anticompetitive effects on independent programmers and consumers.<sup>12</sup> Instead, Sinclair focuses on baseless claims that “there is no evidence that owning two top-four stations in a market will automatically result in greater leverage during retransmission consent negotiations or increased retransmission fees . . . .”<sup>13</sup> Not only do these contentions defy “prevailing economic theory”<sup>14</sup> but they run directly counter to Sinclair’s stated intention to immediately impose retransmission consent contract step-ups for acquired Tribune

---

<sup>10</sup> See Sinclair Annual Report at F-40.

<sup>11</sup> See, e.g., Petition to Deny of Diverse Members of the Coalition to Save Local Media at 6-7; Letter from Charles P. Herring, President, AWE – A Wealth of Entertainment, et al., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-179, at 2 (Feb. 28, 2018); Letter from John Simpson, Consultant to Newsmax Media, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-179 (Feb. 28, 2018).

<sup>12</sup> See, e.g., Petition to Deny of Diverse Members of the Coalition to Save Local Media at 7-9.

<sup>13</sup> Applicants’ Second Opposition at 14.

<sup>14</sup> Comments of NCTA – The Internet & Television Association, MB Docket No. 17-179, at 7, Attachment A (Declaration of Bryan Keating and Jon Orszag) (June 20, 2018).

stations, which will unquestionably raise retransmission consent fees for all acquired stations, including the two stations in Indianapolis and at least one in St. Louis.<sup>15</sup> As multiple parties have explained throughout this proceeding, the transaction would give Sinclair unprecedented leverage to demand increased fees and broader carriage for its affiliated networks, to the detriment of consumers and independent programmers.<sup>16</sup>

#### IV. CONCLUSION

For all of the reasons above, the Commission must reject the transaction and, in any event, hold consideration of the transaction in abeyance until the D.C. Circuit rules on the validity of the UHF discount.

Respectfully submitted,

/s/ \_\_\_\_\_

Michael Fletcher  
Chief Executive Officer  
*RIDE Television Network*  
1025 S. Jennings Ave.  
Fort Worth, TX 76104

Charlie Braico  
President  
*National Association of Broadcast  
Employees and Technicians – CWA*  
501 3rd Street NW  
Washington, DC 20001

Dave Twedell  
Business Representative  
*International Cinematographers Guild*  
7755 Sunset Blvd.  
Los Angeles, CA 90046

Jill Canfield  
Vice President, Legal & Industry Assistant  
General Counsel  
*NTCA – The Rural Broadband Association*  
4121 Wilson Boulevard, Suite 1000  
Arlington, VA 22203

---

<sup>15</sup> Sinclair Broadcast Group Investor Presentation at 7 (May 8, 2017). For example, as described in the Petition to Deny of Diverse Members of the Coalition to Save Local Media – and uncontested by Applicants – the data included in Sinclair’s public Information Request response makes clear that KDNL, the only top-four station Sinclair currently owns in the two markets in question, has the highest retransmission consent fees in the St. Louis market by a significant margin. KDNL *alone* has accounted for *nearly one-third of the entire retransmission consent revenue collected in the St. Louis market* from 2014 to 2017. See Letter from Miles S. Mason, Pillsbury Winthrop Shaw Pittman LLP, Counsel for Sinclair Broadcast Group, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-179, at 13-18 (May 29, 2018).

<sup>16</sup> See, e.g., Petition to Deny of Diverse Members of the Coalition to Save Local Media at 8 n.21.

Phillip Berenbroick  
Senior Policy Counsel  
*Public Knowledge*  
1818 N Street NW  
Suite 410  
Washington, DC 20036

Daphna Edwards Ziman  
President  
*Cinemoi*  
6380 Wilshire Blvd. Suite 910  
Los Angeles, CA 90048

Jason Rieger  
Director  
*Indivisible Chicago Alliance*  
Chicago, IL

David Goodfriend  
Chairman  
*Sports Fans Coalition*  
1300 19th Street NW, Suite 500  
Washington, DC 20036

Howard M. Weiss  
Member  
*Herndon-Reston Indivisible*  
3061 Mt. Vernon Ave., #N405  
Alexandria, VA 22305

July 12, 2018

## CERTIFICATE OF SERVICE

I, Sarah Gurren, hereby certify that on July 12, 2018, I caused a true and correct copy of the foregoing Petition to Deny to be served by electronic mail on the following:

Mace Rosenstein  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001-4956  
mroenstein@cov.com

Miles S. Mason  
Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street, NW  
Washington, DC 20036  
miles.mason@pillsburylaw.com

David Brown  
Federal Communications Commission  
Media Bureau  
445 12th Street, SW  
Washington, DC 20554  
David.Brown@fcc.gov

David Roberts  
Federal Communications Commission  
Media Bureau  
445 12th Street, SW  
Washington, DC 20554  
David.Roberts@fcc.gov

Jeremy Miller  
Federal Communications Commission  
Media Bureau  
445 12th Street, SW  
Washington, DC 20554  
Jeremy.Miller@fcc.gov

July 12, 2018

/s/ Sarah Gurren  
Sarah Gurren